



General Conference

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Control System of the Treaty of Tlatelolco Report of the Secretary-General

I. The obligations of the Treaty of Tlatelolco

The obligations of the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) are recorded in its article 1:

1. *The Contracting Parties hereby undertake to use exclusively for peaceful purposes the nuclear material and facilities which are under their jurisdiction, and to prohibit and prevent in their respective territories:*
 - a. *The testing, use, manufacture, production or acquisition by any means whatsoever of any nuclear weapons, by the Parties themselves, directly or indirectly, on behalf of anyone else or in any other way, and*
 - b. *The receipt, storage, installation, deployment and any form of possession of any nuclear weapons, directly or indirectly, by the Parties themselves, by anyone on their behalf or in any other way.*
2. *The Contracting Parties also undertake to refrain from engaging in, encouraging or authorizing, directly or indirectly, or in any way participating in the testing, use, manufacture, production, possession or control of any nuclear weapon.*

Subparagraph a) of paragraph 1 establishes the positive obligation to “use nuclear material and facilities exclusively for peaceful purposes”. Subparagraphs a, b of paragraph 1, and paragraph 2 include a series of negative obligations that cover all the necessary ways for Latin America and the Caribbean to be free of nuclear weapons.

In Article 1 the very essence of the Treaty of Tlatelolco is condensed and specified.

II. Control System of the Treaty of Tlatelolco

In order to verify compliance with the obligations of Article 1, the Treaty of Tlatelolco establishes a Control System that is applied in accordance with the provisions of Articles 13 to 17. Although Article 24 is not part of the Control System, its observance is essential to ensure compliance with the obligations of the Treaty. Consequently, this article is linked to the Control System.

Articles of the Treaty of Tlatelolco that refer to the Control System address the following aspects:

- **Article 13** – The Parties shall enter into nuclear safeguards agreements with the International Atomic Energy Agency (IAEA).
- **Article 14** – The Parties must submit semiannual reports to OPANAL stating that no activity prohibited by the Treaty has occurred in their respective territories.
- **Article 15** – Special reports at the request of the Secretary-General with respect to any extraordinary fact or circumstance that affect the fulfillment of the Treaty, at the initiative of any of the Parties and with the authorization of the Council.
- **Article 16** – Special inspections by the IAEA, at the request of any of the Parties and with the authorization of the Council.
- **Article 17** – The Treaty does not restrict the rights of the Parties to use nuclear energy for peaceful purposes.
- **Article 24** – The Parties must notify OPANAL of any international agreement they conclude on the matters referred to in the Treaty of Tlatelolco.

In accordance with Article 13 of the Treaty, all 33 States Parties have concluded nuclear safeguards agreements with the IAEA. This obligation is fully covered. For their part, articles 15 to 17 refer to peaceful uses of nuclear energy and mechanisms to be used in case of special events or circumstances that affect compliance with the Treaty of Tlatelolco.

This report focuses on articles 14 and 24; in particular, in the need for all the States Parties to the Treaty of Tlatelolco to comply fully with these two articles.

As established in article 10, paragraph 5, of the Treaty of Tlatelolco, *"the Council, through the Secretary-General, shall ensure the proper functioning of the Control System"*. It is under this provision that the Secretary-General is compelled to bring to the attention of the General Conference the need for all OPANAL Member States to maintain full compliance with articles 14 and 24 of the Treaty of Tlatelolco.

III. Article 14 of the Treaty of Tlatelolco

One of the responsibilities of OPANAL in the application of the Control System of the Treaty of Tlatelolco is to receive and record the reports of the Member States *"in which it is declared that no activity prohibited by the provisions of this Treaty has taken place in their respective territories"* (Article 14, paragraph 1). Compliance with article 14 is not a bureaucratic issue, but an unavoidable commitment for the 33 States Parties to the Treaty of Tlatelolco. In order for the supervision and oversight of the Treaty to operate properly, it is required that the Parties formally express their compliance by regularly submitting reports on Article 14.

There is consensus in the international community that legal instruments in the field of nuclear weapons require verification clauses. In the case of the Treaty of Tlatelolco, the basis for verification –Article 14– rests on the States Parties themselves through formal declarations. The biannual frequency of compliance with article 14 makes not only political and legal, but also practical sense. It is not possible to guarantee that a State Party to the Treaty of Tlatelolco is complying with the Treaty if it does not send the corresponding certifications. Compliance with the Treaty is not only important for its States Parties but also for the entire international community and the United Nations.

The XXVI Special Session of the General Conference (15 November 2018), by resolution CG/E/Res.02/2018, decided to *"adopt, as an option for compliance with the obligation provided for in Article 14 of the Treaty of Tlatelolco, the semiannual reporting format proposed by the Secretary-General in his Report on the Control System, attached to document CG/E/05/2018Rev.2."*

Until the XXVI Session of the General Conference (7 November 2019), only 16 Member States (48% of the OPANAL membership) were fully up to date with compliance with Article 14 of the Treaty, having submitted the necessary certification covering until 30 June 2019; 4 other Member States (12% of the membership) reported compliance as of 31 December 2018, and can be considered as relatively up-to-date (see annex I: status of compliance with article 14).

The fact that 39% of OPANAL's membership is due or in non-compliance with article 14 results in serious concern. Without compliance with article 14 by all States Parties, it is not possible to ensure the effective functioning of the regime for the absence of nuclear weapons in Latin America and the Caribbean.

IV. Article 24 of the Treaty of Tlatelolco

Since the entering into force of the Treaty of Tlatelolco, 14 February 1967, a large number of legal instruments have been added to strengthen the international regime for disarmament and non-proliferation of nuclear weapons. To these international instruments other arrangements concerning the use of nuclear energy have been added. This is of great importance for the work of OPANAL, in particular, for the achievement of the principles and objectives of the Treaty of Tlatelolco. Article 24 of the Treaty of Tlatelolco states:

Once this Agreement has entered into force, any international agreement entered into by any of the Contracting Parties, on the matters to which it refers, will be notified immediately to the Secretariat so that it may register it and notify the other Contracting Parties.

Unlike article 14, article 24 does not have to be complied with under a specific temporality, but it states that the conclusion of an international agreement related to the matters covered by the Treaty of Tlatelolco shall be notified “immediately” to the Secretariat.

There are two Member States that have never reported on the signing of agreements on the matters referred to in the Treaty of Tlatelolco.

V. Observations to the OPANAL General Conference at its XXVI Session

The Treaty is not a political declaration. It is a legal instrument that establishes obligations. OPANAL administers compliance with these obligations of the Member States.

The periodic –semiannual– nature of the certification of article 14 was included in the Treaty of Tlatelolco as a concrete measure. Wisely, the Treaty of Tlatelolco establishes as a central point of the Control System a mechanism of great simplicity –Article 14–, which depends entirely on each Member State.

The OPANAL Secretariat has the function of registering the certifications of article 14. There is the possibility of special reports at the request of the Secretary-General (article 15) and of Special inspections by the IAEA (article 16), mechanisms that complement article 14. Articles 15 and 16 exist to resolve special situations. If a Member State fails to comply with article 14 for several semesters, the interpretation that fits is that it does not do so because it is not complying with article 1 of the Treaty of Tlatelolco.

There are 10 Member States that have not complied with article 14 for more than two years. It has not been proposed so far to activate articles 15 and 16, but it is necessary to overcome the situation of non-compliance with article 14.

In all their meetings and sessions, the Council and the General Conference invariably ask all Member States to comply with article 14. The Secretary-General sends semiannually reminder notes with a certification model attached.

Four Member States (12%) have complied with their reports until the second half of 2018 and one Member State (3%) has done so until the first half of 2018. Nine Member States have not submitted information for four semesters or more, so to date, 39% of the membership is in a status of non-compliance with Article 14.

